

808 KAR 10:280. Qualifications, eligibility, and restrictions on the use of Form U-7, Small Corporate Offering Registration.

RELATES TO: KRS Chapter 292, 15 U.S.C. 78a

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner of the Department of Financial Institutions to promulgate administrative regulations, forms, and orders as are necessary to carry out the provisions of KRS Chapter 292, including administrative regulations and forms governing registration statements, applications, notice filings, and reports. This administrative regulation sets forth the qualifications, eligibility requirements, and restrictions upon legal entities desiring to use Form U-7 to register securities.

Section 1. Qualification for Use of Form. To be eligible to use Form U-7, as incorporated by reference in 808 KAR 10:010, a company shall comply with each of the following requirements:

(1) The company shall be a legal entity organized under the laws of one of the states or possessions of the United States which engages in or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries. "Blind pool" offerings and other offerings for which the specific business or properties cannot now be described shall not be eligible to use Form U-7.

(2) The securities may be offered and sold only on behalf of the company, and Form U-7 shall not be used by any selling security-holder (including purchase underwriters in a firm commitment underwriting) to register the securities for resale.

(3)(a) The following prices shall be equal to or greater than five (5) dollars:

1. The offering price for a share or other ownership interest;
2. The exercise price, if the securities are options, warrants, or similar rights; and
3. The conversion price, if the securities are convertible into shares or other ownership interests.

(b) Execution of the application and filing of the form U-7 shall constitute agreement by the company that the company shall not dilute the value below five (5) dollars by any issuance of new shares or other ownership interests for two (2) years after the conclusion of the registration.

(4) The company may engage selling agents to sell the securities. Commissions, fees, or other remuneration for soliciting any prospective purchaser in this state in connection with this offering shall only be paid to persons who, if required to be registered, the company believes, and has reason to believe, are appropriately registered in this state.

(5) This form shall not be available for the securities of any company if the company or any of its officers, directors, persons with a ten (10) percent ownership interest (or persons occupying similar status or performing similar functions), promoters or any selling agents of the securities to be offered, or any officer, director, or partner (or person occupying similar status or performing similar functions) of the selling agent:

(a) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any state's securities law within (5) years prior to the filing of the application for registration;

(b) Has been convicted within ten(10) years prior to the filing of the application for registration of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, money laundering, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(c) Is currently subject to any state administrative enforcement order or judgment entered by that state's securities department within five (5) years prior to the filing of the application for registration or is subject to any state's administrative enforcement order or judgment in which fraud or

deceit, including but not limited to making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five (5) years prior to the filing of the application for registration;

(d) Is subject to any state's administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with this offer, purchase, or sale of securities;

(e) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restricting or enjoining, or is subject to any order, judgment or decree from any court of competent jurisdiction, permanently restraining or enjoining, the party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five (5) years prior to the filing of the application for registration;

(f) The prohibitions of paragraphs (a) through (c) and (e) of this subsection shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against the person or if the broker-dealer employing the party is licensed or registered in this state and the Form B-D, as incorporated by reference in 808 KAR 10:010, filed with this state discloses the order, conviction, judgment, or decree relating to the person. A person qualified under this subsection shall not act in a capacity other than that for which the person is licensed or registered; and

(g) Any disqualification caused by this section shall be automatically waived if the state securities department or agency of the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that registration be denied. If any of the circumstances in paragraph (c) or (e) of this subsection has occurred more than five (5) years from the date of the application for registration, these circumstances shall be described in response to Question 45 of Form U-7 as a Miscellaneous Factor.

(6) Use of the Form U-7 is available to any offering of securities by a company, the aggregate offering price of which within or outside this state shall not exceed \$1,000,000, less the aggregate offering price for all other securities sold within the twelve (12) months before the start of, and during the offering of, these securities. The Form U-7 shall not be available to a company that is an investment company (including mutual funds) or other pooled investment vehicle, or is subject to the reporting requirements of section 13 or section 15(d) of the Securities Exchange Act of 1934.

Section 2. General Requirements for Use of Form. (1) The fully completed Form U-7 shall be accompanied by:

(a) A letter stating:

1. That registration is sought under 808 KAR 10:280;
2. That the applicant meets the qualifications specified in Section 1;
3. The total dollar amount of the securities to be sold anywhere in connection with this offering;

and

4. The total dollar amount of the securities to be sold in this state;

(b) A consent to service of process, Form U-2 as incorporated by reference in 808 KAR 10:010;

(c) An opinion by an attorney licensed to practice in a state or territory of the United States that the securities to be sold in the offering have been duly authorized and when issued, upon payment of the offering price, will be legally and validly issued, fully paid, and nonassessable and binding on the company in accordance with their terms; and

(d) A check payable to the Kentucky State Treasurer for the amount specified as the filing fee in KRS 292.380(5) which consists of a registration fee and an examination fee.

(2) The Form U-7 constitutes the offering circular or prospectus. The Form U-7 shall be delivered to each investor before a sale is made.

(3) The registration, once declared effective in this state, shall be effective for either the period specified in the Form U-7 or one (1) year, whichever is shorter. If the offering is not yet concluded after the initial one (1) year period, the registration may be renewed by payment of a new registration fee and filing of an updated Form U-7.

(4) After the registration has been declared effective, and while the offering is still in progress, if any portion of the Form U-7 needs to be changed or revised because of an event concerning the company or the offering to make the Form U-7 accurate and complete, it shall be changed, revised, or supplemented. An updated Form U-7, clearly marked to show the changes from the previously filed version, shall be filed and cleared with the office of this state before use. If any of the changes or revisions are of such significance that they are material to the making of an investment decision, and if the minimum proceeds have not been raised, the updated Form U-7 shall be re-circulated to persons in this state that have previously subscribed, and they shall be given the opportunity to either rescind or reconfirm their investment.

(5) Options, warrants, and similar rights to purchase securities shall constitute a continuous offering of the underlying securities during the exercise period and shall require the securities to be registered and the Form U-7 to be kept continuously current throughout the exercise period through the use of the procedure set forth in subsection (4) of this section or by means of a supplement, as appropriate. Upon any change, revision, or supplement to the Form U-7, a copy shall be promptly furnished to the holders of options, warrants, and similar rights.

(6) Any supplemental literature or advertisements announcing the offering shall be cleared by the department prior to use. Advertisements and announcements mentioning the offering shall be governed by the guidelines for "tombstone" style statements generally used in registered offerings and shall contain a statement to the effect that "this announcement does not constitute an offer to sell or the solicitation of an offer to buy" the securities and that the offer shall be made only by an official disclosure document. Any materials meeting the requirements of 808 KAR 10:380, Section 1(d), shall be acceptable. (19 Ky.R. 1273; eff. 1-4-93; 37 Ky.R. 2494; 2843; eff. 7-1-11; Crt eff. 2-27-2020.)